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JUN 21 2006

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CLERK'S OFFICE

DOCKET NO. 1763

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

PLEADING NO. 48

IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

## TRANSFER ORDER

This litigation currently consists of five actions in the District of New Jersey and one action each in the Northern District of Ohio and the Northern District of Oklahoma, as listed on the attached Schedule A. Defendant Regeneration Technologies, Inc. (RTI) moves the Panel, pursuant to 28 U.S.C. § 1407, for an order centralizing these seven actions in the District of New Jersey.<sup>1</sup> RTI's motion is supported by defendant Tutogen Medical, Inc., defendant SpinalGraft Technologies, LLC (SGT) and associated entities,<sup>2</sup> and plaintiffs in two District of New Jersey actions. Plaintiffs in two potential tag-along actions pending, respectively, in the District of New Jersey and the Northern District of Florida, oppose centralization; these plaintiffs alternatively support transfer to the Northern or Southern District of Florida. Plaintiff in the other Northern District of Florida potential tag-along action supports transfer to the Southern District of Florida. Plaintiffs in two potential tag-along actions in the Southern District of West Virginia and plaintiffs in a potential tag-along action in Northern District of Ohio support transfer to the Southern District of West Virginia. Additionally, plaintiffs in two Northern District of Alabama potential tag-along actions and plaintiffs in the Southern District of Ohio potential tag-along action support transfer to the district in which their respective action is pending.

<sup>1</sup> The Panel has been notified of an additional 42 actions pending in the following districts: eight actions in the Middle District of Louisiana; five actions in the District of New Jersey; three actions each in the Eastern District of New York and the Northern District of Ohio; two actions each in the Northern District of Alabama, the Northern District of Florida, the Northern District of Georgia, the Northern District of Iowa, the District of South Carolina, the Western District of Tennessee, and the Southern District of West Virginia; and one action each in the Southern District of California, the Southern District of Indiana, the Western District of Kentucky, the District of Minnesota, the Western District of New York, the Middle District of North Carolina, the Southern District of Ohio, the Eastern District of Pennsylvania, and the Eastern District of Texas. These actions and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

<sup>2</sup> SGT is a single-member limited liability company. Its sole member is Medtronic Sofamor Danek USA, Inc., which is a wholly owned subsidiary of Medtronic Sofamor Danek, Inc., which in turn is a wholly owned subsidiary of Medtronic, Inc. These entities are named in various combinations in all but one action now before the Panel.

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EXHIBIT

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IMAGED JUN 21 2006

On the basis of the papers filed and hearing session held, the Panel finds that these seven actions involve common questions of fact, and that centralization under Section 1407 in the District of New Jersey will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share allegations concerning a scheme by defendant BioMedical Tissue Services, Ltd. (BTS) to harvest tissue from human corpses without proper consent and sell the tissue to other defendants, which are tissue processing companies. Plaintiffs claim that the defendant processors processed the BTS-supplied tissue without checking or following procedures to determine the origin, nature, or suitability of the tissue for human transplantation. Moreover, some plaintiffs contend that the processor defendants engaged in flawed procedures that did not cleanse the received tissue as those defendants represented; relatedly, plaintiffs also allege that defendants distributing the tissue failed to check or follow procedures to determine the source or viability of such tissue. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

Objecting plaintiffs contend that centralization is not needed because the actions lack a common factual basis, since they necessarily involve different tissue implants, several different defendants, and likely different damages. We disagree. The alleged improprieties regarding the illegal harvesting, flawed processing and/or inappropriate distributing of human tissue forms the factual backdrop to all actions presently before the Panel. Transfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common parties and witnesses are not subjected to discovery demands that duplicate activity that will occur or has occurred in other actions. Also, discovery with respect to any case-specific issues can proceed concurrently with discovery on common issues. *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976).

We conclude that the District of New Jersey is an appropriate transferee forum for this litigation. The District of New Jersey is where relevant documents and witnesses may be found, since BTS was based there, and one of the defendant tissue processors and several funeral homes from which the tissue was harvested are also located there.<sup>3</sup> By centralizing this litigation before Judge William J. Martini, who presides over all present actions and potential tag-along actions pending in the District of New Jersey, we are assigning this litigation to a jurist who has the experience necessary to steer this litigation on a prudent course.

<sup>3</sup> This district is the closest suggested transferee district to New York, which is the situs of ongoing criminal proceedings involving BTS's principals, Michael Mastromarino and Joseph Nicelli.

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IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable William J. Martini for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

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SCHEDULE A

MDL-1763 -- In re Human Tissue Products Liability Litigation

District of New Jersey

*Gary Pieper v. Medtronic Sofamor Danek, Inc., et al.*, C.A. No. 1:06-433  
*Arlene Sechtin v. Regeneration Technologies, Inc., et al.*, C.A. No. 2:06-135  
*Anh Nguyen, et al. v. Medtronic Sofamor Danek, Inc., et al.*, C.A. No. 2:06-417  
*Anthony J. Vitola, et al. v. BioMedical Tissue Services, Ltd., et al.*, C.A. No. 2:06-466  
*Heather Augustin v. Medtronic Sofamor Danek, Inc., et al.*, C.A. No. 2:06-467

Northern District of Ohio

*Cindy Sciuva v. SpinalGraft Technologies, LLC, et al.*, C.A. No. 1:06-216

Northern District of Oklahoma

*Paula L. Coleman v. Medtronic, Inc., et al.*, C.A. No. 4:05-741

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**UNITED STATES OF AMERICA**  
**JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**CHAIRMAN:**  
 Judge Wm. Terrell Hodges  
 United States District Court  
 Middle District of Florida

**MEMBERS:**  
 Judge D. Lowell Jensen  
 United States District Court  
 Northern District of California

Judge J. Frederick Motz  
 United States District Court  
 District of Maryland

Judge Robert L. Miller, Jr.  
 United States District Court  
 Northern District of Indiana

Judge Kathryn H. Vratil  
 United States District Court  
 District of Kansas

Judge David R. Hansen  
 United States Court of Appeals  
 Eighth Circuit

Judge Anthony J. Scirica  
 United States Court of Appeals  
 Third Circuit

**DIRECT REPLY TO:**

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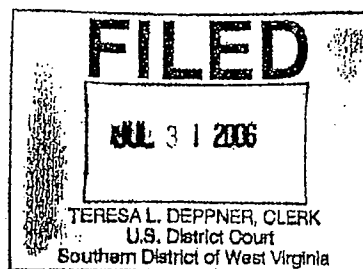
<http://www.jpml.uscourts.gov>

July 27, 2006

William T. Walsh, Clerk  
 Martin Luther King, Jr. Fed. Bldg. & U.S. Courthouse  
 50 Walnut Street, 4th Floor  
 Newark, NJ 07102

Re: MDL-1763 -- In re Human Tissue Products Liability Litigation

(See Attached CTO-1)



Dear Mr. Walsh:

*Frazier v. BioMedical*  
*6:06-0198*

I am enclosing a certified copy and one additional copy of a conditional transfer order filed by the Panel in the above-captioned matter on July 11, 2006. As stipulated in Rule 7.4(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), transmittal of the order has been stayed 15 days to give any party an opportunity to oppose the transfer. The 15-day period has now elapsed, no opposition was received, and the order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi  
 Clerk of the Panel

By *Ganisha Spinner*  
 Deputy Clerk

Attachment

cc: Transferee Judge: Judge William J. Martini  
 Transferor Judges: (See Attached List of Judges)  
 Transferor Clerks: (See Attached List of Clerks)

JPML Form 36

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*BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION*  
*IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION*  
*(SEE ATTACHED SCHEDULE)*

*CONDITIONAL TRANSFER ORDER (CTO-1)*

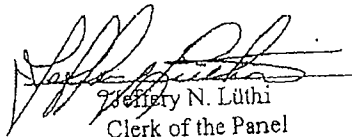
On June 21, 2006, the Panel transferred two civil actions to the United States District Court for the District of New Jersey for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* \_\_\_F.Supp.2d\_\_\_ (J.P.M.L. 2006). With the consent of that court, all such actions have been assigned to the Honorable William J. Martini.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of New Jersey and assigned to Judge Martini.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the District of New Jersey for the reasons stated in the order of June 21, 2006, and, with the consent of that court, assigned to the Honorable William J. Martini.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of New Jersey. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

  
Jeffrey N. Lüthi  
Clerk of the Panel

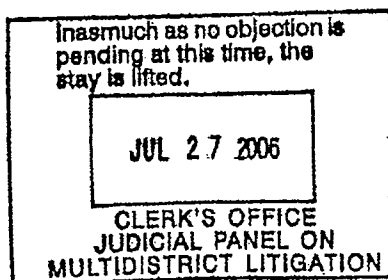


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SCHEDULE CTO-1 - TAG-ALONG ACTIONS  
DOCKET NO. 1763  
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

DIST. DIV. C.A. #

CASE CAPTION

ALABAMA NORTHERN

ALN 2 06-712

ALN 2 06-871

Teresa Wothers v. Michael Mastromarino, et al.  
Frank D. Fife v. BioMedical Tissue Services, Ltd., et al.

CALIFORNIA SOUTHERN

CAS 3 06-870

Eric Simila, et al. v. BioMedical Tissue Services, Ltd., et al.

FLORIDA NORTHERN

FLN 1 06-73

FLN 1 06-91

Harriet P. King v. Medtronic Sofamor Danek USA, Inc., et al.  
Willie James Jones v. Regeneration Technologies, Inc., et al.

GEORGIA NORTHERN

GAN 1 06-1056

~~GAN 1 06-1407~~

Norman Zappa v. BioMedical Tissue Services, Ltd., et al.  
~~Darlean Adams v. Medtronic Sofamor Danek USA, Inc., et al. Vacated 7/21/06~~

IOWA NORTHERN

IAN 3 06-3020

IAN 3 06-3027

Jill Symonds v. BioMedical Tissue Services, Ltd., et al.  
Robert Kalvig v. BioMedical Tissue Services, Ltd., et al.

INDIANA SOUTHERN

INS 1 06-332

INS 1 06-930

INS 1 06-931

Brian Springer v. Biomedical Tissue Services, Ltd., et al.  
Craig Kimmel v. Michael Mastromarino, et al.  
A.R., et al. v. Michael Mastromarino, et al.

KENTUCKY WESTERN

KYW 3 06-185

Gary Howlett, et al. v. Biomedical Tissue Services, Ltd., et al.

LOUISIANA MIDDLE

LAM 3 06-170

LAM 3 06-221

LAM 3 06-222

LAM 3 06-275

LAM 3 06-313

LAM 3 06-314

LAM 3 06-315

LAM 3 06-316

Darrel Bourque, et al. v. Regeneration Technologies, Inc., et al.  
Deborah D. Brunet, et al. v. Regeneration Technologies, Inc., et al.  
Deridre Caruthers, et al. v. Regeneration Technologies, Inc., et al.  
Graden A. McCool, Jr., et al. v. Michael Mastromarino, et al.  
Velma Brock, et al. v. Regeneration Technologies, Inc., et al.  
Jack Blacklock, et al. v. Regeneration Technologies, Inc., et al.  
Genie T. Hoover, et al. v. Regeneration Technologies, Inc., et al.  
Daniel Ballard, et al. v. Regeneration Technologies, Inc., et al.

MINNESOTA

MN 0 06-1596

Marlyn McDonald, et al. v. Medtronic, Inc., et al.

NORTH CAROLINA MIDDLE

~~NCM 1 06-432~~

~~Donna Sanders, et al. v. Forsyth Memorial Hospital, Inc., et al. Opposed 7/25/06~~

NEW YORK EASTERN

NYE 1 06-1610

NYE 1 06-2127

NYE 1 06-2128

Beverly Epperson v. Regeneration Technologies, Inc., et al.  
Sondra Nichols v. Medtronic Sofamor Danek, U.S.A., Inc., et al.  
Mikol Bruce Miller, et al. v. Medtronic Sofamor Danek, U.S.A., Inc., et al.

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SCHEDULE OF ACTIONS (CTO-1)- DOCKET NO. 1763

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DIST. DIV. C.A. #                      CASE CAPTION

NEW YORK WESTERN  
~~NYW 6 06-6140~~                      ~~Cynthia Kennedy-McInnis, et al. v. Biomedical Tissue Services, Ltd., et al.~~ Opposed 7/20/06

OHIO NORTHERN  
OHN 1 06-458                      Jacqueline McCauley, et al. v. Biomedical Tissue Services, Ltd., et al.  
OHN 1 06-646                      Betty A. Myers, et al. v. BioMedical Tissue Services, Ltd., et al.  
OHN 3 06-1252                      Kelly Hatula-Espy, et al. v. BioMedical Tissue Services, Ltd., et al.

OHIO SOUTHERN  
OHS 1 06-75                      James Sunderman, et al. v. Regeneration Technologies Inc., et al.

OKLAHOMA NORTHERN  
~~OKN 4 06-331~~                      ~~Frank Davenport, et al. v. BioMedical Tissue Services, Ltd., et al.~~ Opposed 7/25/06

PENNSYLVANIA EASTERN  
PAE 2 06-721                      Darlene Krzywicki, et al. v. BioMedical Tissue Services, Ltd., et al.

SOUTH CAROLINA  
SC 3 06-913                      Sharon McKerley v. Medtronic Sofamor Danek USA, Inc., et al.  
SC 8 06-1183                      Kelly J. Sealy, et al. v. Medtronic Sofamor Danek, Inc., et al.

TENNESSEE EASTERN  
TNE 3 06-217                      Charles Wells, et al. v. BioMedical Tissue Services, Ltd., et al.

TENNESSEE WESTERN  
TNW 2 06-2208                      Daniel R. Adams v. BioMedical Tissue Services, Ltd., et al.  
TNW 2 06-2209                      Marlene Smith v. BioMedical Tissue Services, Ltd., et al.

TEXAS EASTERN  
TXE 2 06-178                      Alan Curt Schroeder v. Medtronic Sofamor Danek, USA, Inc., et al.

WEST VIRGINIA SOUTHERN  
WVS 2 06-197                      David Ramella v. BioMedical Tissue Services, Ltd., et al.  
WVS 6 06-198                      Jami Marie Frazier v. BioMedical Tissue Services, Ltd., et al.

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INVOLVED JUDGES LIST (CTO-1)  
DOCKET NO. 1763  
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

Hon. William M. Acker, Jr.  
Senior U.S. District Judge  
481 Hugo L. Black U.S. Courthouse  
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Hon. Carol Bagley Amon  
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225 Cadman Plaza East  
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Hon. Sarah Evans Barker  
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210 Birch Bayh Federal Building & U.S. Courthouse  
46 East Ohio Street  
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Hon. Michael R. Barrett  
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100 East Fifth Street  
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Hon. Mark W. Bennett  
Chief Judge, U.S. District Court  
U.S. District Court  
P.O. Box 838  
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Hon. Frederic Block  
Senior U.S. District Judge  
U.S. Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

Hon. James J. Brady  
U.S. District Judge  
369 Russell B. Long Federal Bldg.  
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Hon. J. Daniel Breen  
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345 U.S. Courthouse  
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Hon. William S. Duffey, Jr.  
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75 Spring Street, S.W.  
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411 Page Belcher Federal Bldg. & U.S. Courthouse  
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Hon. John P. Fullam  
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15614 James A. Byrne U.S. Courthouse  
601 Market Street  
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Hon. Nina Gershon  
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1429 U.S. Courthouse  
225 Cadman Plaza East  
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Hon. Joseph R. Goodwin  
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INVOLVED JUDGES LIST (CTO-1) - MDL-1763

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INVOLVED CLERKS LIST (CTO-1)  
DOCKET NO. 1763  
IN RE HUMAN TISSUE PRODUCTS LIABILITY LITIGATION

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